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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215038
Party	Defendant Kiaico, Inc.
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Date	09/04/2014
Attachments	Objection to Motion to Extend Time to Answer 91215038.pdf(28736 bytes)

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition Proceeding 91215038

In the matter of Trademark Application No. 85904663

For the mark: MARSHAL A.R.T.

Marshall Amplification PLC

v.

KIAICO, Inc.

OBJECTION TO MOTION TO EXTEND

Applicant opposes granting the motion to extend the time to answer because the motion is abusive (a dilatory motive on the part of the movant), because inability to communicate with one's client is not good cause and because Opposer did not spell out the reasons in sufficient detail.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b) and TBMP §509.01(a). The Board is generally liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710 (Fed. Cir. 1991). There is also a requirement that the "good cause" is spelled out in sufficient detail.

See *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 2000); *HKG Industries, Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156 (TTAB 1998).

Abusive--Dilatory motive on the part of the movant

Opposer filed its unconsented request on 09/02/2014 for an extension of time to answer a counterclaim for a counterclaim that was filed on 04/07/2014. Opposer had already received an extension of time to answer by filing a motion to object to the filing of the counterclaim. Opposer *should have known* when it filed the objection that Fed. R. Civ. P. 15(a)(1)(A) provides that a party may amend its pleading once as a matter of course within 21 days after serving it but yet Opposer filed a brief on untimeliness for 13 days of delay rather than prepare an answer to the counterclaim.

Opposer's unconsented motion appears to be a dilatory motive on the part of the movant who has had almost 5 months to prepare an Answer. Applicant anticipates that Opposer will deny all salient claims in its Answer or state that it does not have sufficient information to admit or deny which is not a time consuming chore nor one that should require approval under the circumstances from all the chains of command for Opposer's counsel.

Good cause-inability to communicate is not good cause, nor is confirming facts

The Board has held that counsel's mere assertion of inability to communicate with his client does not constitute good cause. See *SFW Licensing Corp. and Shoppers Food*

Warehouse Corp. v. Di Pardo Packing Limited, 60 U.S.P.Q.2d 1372 (TTAB 2001). Opposer's counsel did not submit a declaration with its brief spelling out any specific reasons or justifications for the inability to communicate nor give sufficient detail why an Answer could not be filed. Opposer's counsel *should know* that if he does not have sufficient information to admit or deny ("confirm the facts applicable to the allegation") the defendant may so state, and this statement will have the effect of a denial as to that allegation (see TBMP 311.02(a) Admissions and Denials). Delaying the proceeding to confirm facts is not good cause for an extension.

Not Good Cause-insufficient detail

The party moving for an extension bears the burden of proof, and must state with particularity the grounds therefor, including detailed facts constituting good cause. Trademark Rule 2.127(a).

Aside from the inability to confer with client, Opposer gives an inability to confer with Applicant telephonically as a good cause in #4. Without a declaration or evidence or even a logical argument provided, one could wonder why Opposer requires a telephonic conference with Applicant in order to file an Answer and why this is a detailed ground to extend. There are no detailed facts here.

Applicant readily admits that it has objected to continued telephonic conferences with Opposer's counsel regarding settlements offers and agreements and as such has asked for everything to be in writing. Certainly written words between Applicant and

Opposer's counsel would be much easier for Opposer's counsel to communicate through all the layers of approval required. Opposer's counsel mischaracterizing wanting all settlement offers in writing as good cause for failure to file an Answer is baffling.

Applicant objects to the extension of time for all these reasons.

Submitted By: /MRKIAI/

Date: September 4, 2014

Dan Healy, CEO KIAICO Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion to Dismiss has been served on John A. Clifford by mailing said copy on September 4, 2014, via First Class Mail, postage prepaid to:

John A. Clifford, Esq.
Merchant & Gould, P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

By: /MRKIAL/

Date: September 4, 2014

Dan Healy, CEO KIAICO Inc.